IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

State of Raj. vs. Femroz Aheram Shah Illavabia

S.B. Civil Second Appeal No.93/1982 under Section 100 C.P.C. against the judgment and decree dated 8.2.1982 passed by the learned Addl.District Judge, Udaipur in Civil Appeal No.15/81.

Date of Order: November 08, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. M.R. Singhvi for the appellant.
None appeared for the respondent despite service.

BY THE COURT:

Brief facts of the case are that plaintiff-respondent filed the suit for recovery of Rs.5929.60 from the defendant-appellant. According to the plaintiff, the plaintiff-respondent under the threat of attachment warrant had to give a cheque of Rs. 5775/- to the appellant-defendant Excise Department, in the alleged recovery proceedings initiated by the Excise Department for dues against the plaintiff-respondent's father. According to the plaintiff, the plaintiff was not concerned with Kishangarh Distillery for which the plaintiff's father took the loan from the Excise Department, Udaipur. Since there was a threat of attachment

of the property, therefore, the plaintiff paid the cheque mentioned above to the Recovery Officer but the plaintiff gave this cheque under protest and thereafter served notice upon the defendant-appellant under Section 80,C.P.C. and demanded the amount recovered from the plaintiff-respondent. When the defendant-appellant did not re-pay the amount, the plaintiff filed the suit for the recovery of the above amount. The defendant submitted written statement and stated that the demand notice was issued for recovery of Rs.5773/- under the provisions of the Rajasthan Land Revenue Act for recovery of the government dues. According to the defendant, certain amount was advanced to the father of the plaintiff out of which the father of the plaintiff repaid Rs.24,216/-. Rs.5973/- remained due in the father of the plaintiff, therefore, recovery proceedings were initiated under the provisions of the Rajasthan Land Revenue Act and in the recovery proceedings, the plaintiff paid the said amount. The defendant submitted that the plaintiff was under pious obligation to pay the debt of his father and he in fact paid the amount and, therefore, he has no right to recover the amount from the defendant. It is also submitted that when amount is recovered under the provisions of the Rajasthan Land Revenue Act, the civil court has no jurisdiction to entertain the suit.

The trial court framed the four issues and put burden to prove the issues upon the defendant. Before the trial court, on 11.12.1976 it is stated by the plaintiff that the plaintiff does not want to lead evidence on issue no.1. The trial court, therefore, closed the evidence of the plaintiff and fixed the date for evidence of the defendant. The defendant produced witnesses and again the plaintiff did not produce any evidence to rebut the evidence of the defendant. The trial court also framed an additional issue and burden to prove that issue was also upon the defendant. Be it as it may be, the trial court held that the plaintiff being Hindu was under pious obligation to pay the debt of his father and held that the defendant-appellant Excise Department had right to recover the amount from the plaintiff. The trial court also considered in detail Section 40 of the Rajasthan Excise Act,1950 and held that the amount recovered by the Excise Department could have been recovered by following the procedure as provided under the Rajasthan Land Revenue Act, 1956. The trial court held that in the proceedings for recovery of the government dues under the provisions of the Rajasthan Land Revenue Act, suit for recovery of the said amount can be filed which is specifically provided under the provisions of the Land Revenue Act itself. In view of the finding recorded above, the trial court dismissed the suit of the plaintiff by the judgment and decree dated 31.3.1979.

The plaintiff preferred appeal against the judgment and decree of the trial court dated 31.3.1979. The appeal was allowed by the first appellate court after observing that the trial court committed mistake in holding that the plaintiff was liable to pay the debt of his father. The first appellate court also held that the trial court committed error in deciding issue no.1 partly in favour of the plaintiff and also committed illegality in deciding issue no.3 against the plaintiff.

While admitting the appeal, following substantial questions of law were framed by this Court on 16.7.1982:-

> "1. Whether the amount in question could have been realized from the plaintiff under the head "other dues" within the meaning of section 256(i)(b) of the Rajasthan Land Revenue Act ?
>
> 2. Whether the first appellate court was justified in holding that the plaintiff did not get any assets from his deceased father, without any controversy in that respect having been raised in the plaint?"

None appeared on behalf of the respondent despite service.

Heard learned counsel for the appellant. According to the learned counsel for the appellant, the first appellate court committed serious error of law in decreeing the suit of the plaintiff. It is submitted that

this was a suit filed by the plaintiff after making the payment of the demand raised under the statutory provisions of Sections 256 and 257 of the Rajasthan Land Revenue Act for recovery of the government dues. The plaintiff himself did not appear nor produced any witness to prove that the recovery was illegal. Not only this, the plaintiff had right to rebut the evidence of the defendant but in rebuttal also he did not appear, therefore, the lawful recovery made under the provisions of the Rajasthan Land Revenue Act cannot be nullified merely because filing of the suit by the plaintiff. It is also submitted that the judgment of the first appellate court is virtually a non-speaking judgment because the first appellate court did not consider the evidence of the defendant and there was no evidence of the plaintiff. Not only this but the first appellate court failed to appreciate the facts of the case and reversed the finding of the trial court without assigning any reason and without considering the reasons given by the trial court. It is submitted that it was the duty of the plaintiff to prove that the recovery is illegal because the recovery was made by following the procedure provided under the law. It is not the case of seeking stay against the recovery only but it was challenge to the proceedings taken by the lawful authorities under the provisions of law. It was never the case of the plaintiff that he did not receive any assets from his late father. It is also not the case of the plaintiff that his father was not defaulter. Even if it is assumed that by

implication, the plaintiff meant it then there is no evidence in support of his such implied pleas. In view of the above no decree could have been passed for recovery of the amount in favour of the plaintiff. It is also submitted that the trial court carefully considered the relevant provisions of law and held that the amount recovered from the plaintiff is falling in the head “other dues” within the meaning of Section 256(i) (b) of the Rajasthan Land Revenue Act. It is also submitted that it was not the suit filed by the appellant-defendant for recovery of the amount so as to have a burden upon the defendant-appellant to prove that the plaintiff was liable to pay the government dues as he received the assets from his father.

I considered the submissions of the learned counsel for the appellant and perused the record.

This Court has no hesitation in holding that the first appellate court has not considered the reasons given by the trial court nor considered the relevant provisions of law before reversing the finding recorded by the trial court. It appears from the facts of the case that the attachment warrant was issued against the plaintiff for recovery of the amount and he paid the amount, which according to the plaintiff was paid under protest. In view of the above facts, the plaintiff got the

right to file suit for recovery of the amount but the court could have decreed the suit only on finding that the recovery was illegal. To prove that the recovery was illegal, it was the duty of the plaintiff to prove that the plaintiff's father was not liable for the amount and consequently, he was also not liable for the amount, or though the father was liable but the recovery cannot be affected from the plaintiff after the death of plaintiff's father. The plaint lacks in pleading in respect of these two pleas but those pleas were considered by the court below. The plaintiff himself nowhere says that his father was not liable to pay the amount nor his case is that he has not received any assets from his father after father's death. In view of the above, the liability of the plaintiff's father is established. For recovering the amount, the plaintiff did not prove that he did not receive any assets from his father. Therefore, the first appellate court committed serious error of law in holding that the plaintiff is not liable to pay the amount. The amount in question clearly falls within the definition of “other dues” which can be recovered as government revenue by following the procedure under the Rajasthan Land Revenue Act.

In view of the above, substantial questions of law no.1 and 2 are decided in favour of the appellant and it is held that the first appellate court observed that the plaintiff did not receive any assets from his

father was not the case of even plaintiff.

In view of the above discussion, the appeal of the appellant deserves to be allowed and hence allowed. The judgment and decree dated 8.2.1992 passed by the first appellate court is set aside and the judgment and decree dated 31.3.1979 passed by the trial court is restored. Consequently the suit of the plaintiff stands dismissed.

(PRAKASH TATIA),J.

mlt.